IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18307 of 2006

Date of decision: 11.10.2007

M/s Goyal Trading Company

..... Petitioner

Versus

Excise and Taxation Officer and others

..... Respondents

Coram: Hon'ble Mr. Justice M.M.Kumar
Hon'ble Mr. Justice Ajay Kumar Mittal

Present: Mr. Akshay Bhan, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. A.G. Punjab.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing assessment order dated 12.09.2006 (P-9) framed by the Designated Officer-respondent No. 1 in respect of the purchases made by the petitioner. Further prayer has also been made for issuance of direction to respondent No. 1 to refund all the Input Tax Credit (I.T.C.), which has been rejected in respect of period 2005-2006 after passing order dated 12.09.2006. In para-11 of the writ petition, it has been asserted that notice dated 01.09.2006 under Section 13 read with Rule 21 (3)(a) of the Punjab Vat Act, 2005 (P-7) was issued to the petitioner firm to prove the genuineness of ITC claimed by the petitioner firm and the petitioner was asked to appear before respondent No. 1 on 12.09.2006. According to the petitioner, the notice was received by it on 07.09.2006.

In the corresponding para of the reply filed by the respondent, it has not been denied that the notice was issued on 01.09.2006 and the

same was received by the petitioner on 07.09.2006. In sub para (v) of para-15, it has been conceded that the notice was received by the petitioner on 07.09.2006 and the matter was heard on 12.09.2006.

According to Rule 47 of the Punjab VAT Rules, 2005 (for brevity 'the Rules'), a notice issued under this rule is required to provide a time period of not less than 10 days for production of such accounts and documents as specified in the notice. It is obvious that the petitioner has received the notice dated 01.09.2006 on 07.09.2006 and the period of 10 days envisaged by Rule 47 of the Rules was not made available to the petitioner because the order was passed on 12.09.2006 itself when the petitioner has appeared.

In view of the peculiar facts and circumstances of the case, learned State counsel has stated that impugned order dated 12.09.2006 (P-9) may be set aside by granting liberty to respondent No. 1 to pass an order afresh in accordance with law after complying with provisions of Rule 47 of the Rules.

In view of the above, order dated 12.09.2006 (P-9) is set aside with liberty to the Designated Officer to pass a fresh order in accordance with law including the provisions of Rule 47 of the Rules. The writ petition stands disposed of .

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 11, 2007
pj